Supreme Court, U.S.
FILED

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OFFICE OF THE

IN THE
SUPREME COURT OF THE UNITED STATES
October Team

FERNANDO MARCELLA
PETITIONER

V.

KEVIN MURPHY, ET AL.,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS

FOR THE FIRST CIRCUIT

FERNANDO MARCELLA
Pro Se
3 Oakhill Drive
Lincoln, R.I. 02865
401-333-0724

30 pp

QUESTIONED PRESENTED

In a civil rights police misconduct case, did the court of Appeals err in not admitting into evidence the disposition of criminal charges against the plaintiff in the civil rights case, who was the defendant in the criminal case, when both the criminal charges and the civil rights allegations arose from the same basic set of events.

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Rhode Island General Law 12-10-12

I. REFERENCE TO OPINIO[illegible]N THE CASE

The case below was decided by the United Sates of Appeals for the first Circuit in an unreported decision, Fernando Marcella v. Kevin Murphy, et al. (1st Cir. June 12, 2001).

II. BASIS FOR THE JURISDICTION OF THIS COURT

The judgement in this case was entered on June 12, 2001, by the United States courts of appeals for the first Circuit.

This Court has jurisdiction to review the judgement in question by writ of certiorari pursuant to 28 U.S.C. - 1254.

III. THE STATUTES INVOLVED

Federal Rule of Evidence 401

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rhode Island General Law 12-10-12:

(a) Subject to any other provisions of law relative to the filing of complaints for particular crimes, any judge of the district court or superior court may place on file any complaint in a criminal case other than a complaint for the commission of a felony or a complaint against a person who has been convicted of a felony or a private complaint. The court may in its discretion require, as a condition of a filing, the performance of services for the public good or may attach any other conditions it determines. In cases where the court orders restitution totaling less than two hundred dollars (200) to an injured party pursuant to this section

or 12-19-34, the court shall require that full restitution be made at the time of sentencing if the court determines that the defendant is able to make that restitution at that time.

(b) It is an express condition of any filing in accordance with this section that the defendant, at all times for one year, keeps the peace and is of good behavior. A violation of that express condition or any other condition set by the court is a violation of the filing, and the matter may be resurrected by the court. A determination of whether a violation has occurred shall be made by the court in accordance with the procedures relating to a violation of probation, 12-19-9 and 12-19-14.

(c) In the event the complaint was originally filed under this section subsequent to the defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have been a violation, it may proceed to the further disposition of the complaint according to law. If no action is taken on the complaint for a period of one year following the filing, the complaint shall be expunged pursuant to the provisions of chapter 1.3 of this title. Further, if any record of the complaint has been entered into a docket or alphabetical index, whether kept in writing or in an electric information storage system or other data compilation system. All references to the identity of the person charged by the complaint shall be removed from the docket or index. No criminal record shall result, unless in any civil action for a tort, in which a plea of guilty or a finding of guilty is admissible notwithstanding the fact that the complaint has been filed.

IV. STATEMENT OF THE CASE

The plaintiff filed a complaint against Kevin Murphy, a police officer employed by the town of Lincoln, making sundry allegations against said officer. The case was presented to the jury on two claims against officer Murphy, excessive force and false arrest.[1] The jury returned a verdict for the defendant Murphy at.

the conclusion of the trial.

The plaintiff alleged in this case that he was falsely arrested and that excessive force was used in the course of his arrest. The defendant was charged in the State District Court with assaulting a police officer and resisting arrest. He sought to introduce into evidence what happened as a result of those charges, both through his own testimony and through the documentation showing the disposition of these charges. The Court refused to allow him to do so on both occasions. This petition is based on the exclusion of this evidence.

V. REASON FOR GRANTING THE WRIT

A. Introduction

This case was a credibility contest. There was an altercation between the plaintiff and the police. Almost every aspect of the altercation is disputed. To illuminate the dispute, the plaintiff sets forth below two versions of the facts, his version and the police version.

B. PLAINTIFF'S VERSION

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[1]There was also a civil rights complaint against the Town of Lincoln and William Strain, the Chief of the Lincoln police. The Court granted the motion for judgement as a matter of the law against the Town and William Strain.

On April 7, 1998, about 6:30 p.m. The plaintiff was driving home in the Town of Lincoln, where he had lived for 15 years, App. at 27; Tr. of June 26 at 22. He was alone in his car. App. at 25, 27;Tr.of June 26 at 20,22. There was a problem with his car radio. He signaled, and safety pulled over, away from the pavement. App. at 28; Tr. of June 26 at 23. A police cruiser driven by defendant Kevin Murphy had been following the plaintiff. App. at 27; Tr. of June 26 at 22. He exited his car and went to the rear of the vehicle. The plaintiff testified that he believed that items in the trunk of his car might have been the source of his car radio problem. App. 28; Tr. of June 26 at 23.

The plaintiff testified that defendant Murphy pulled behind him, exited his car, and approached him. App. at 31-32; Tr. of June 26 at 26-27. The plaintiff testified that the defendant grabbed the keys out of his hand, accompanied with a vulgar demand for the keys. App. at 33; Tr. of June 26 at 28. The plaintiff testified that the officer then proceeded to grab him, push him against the car, and hit him in the back with his knee. App. at 33; Tr. of June 26 at 28. The plaintiff testified that he was further struck and pushed to the ground and kicked.

The officer came down on his back, punched him and proceeded to push his face in to the dirt with force causing the plaintiff to loose consciousness and also causing an injury to his right eye. Soon after the plaintiff testified that other police officer got on top of him and after he was handcuffed officer Murphy sprayed his face with a chemical, pushed him into a police cruiser and drove him to the police station. Plaintiff also testified that in the cell another officer, ripped his shirt and violently pushed him against the block wall in the cell smashing his head against it. App. at 34: Tr. of June at 29.

C. Defendant (Police officer) Version

The defendant testified that he first noticed the plaintiff's vehicle because it was going slowly. App. at 106; Tr. of June 26 at 101. He testified that the vehicle stopped abruptly with the front of the car on the dirt, but the rear of the vehicle stuck out into the road blocking the left lane. App. at 106; Tr. of June 26 at 101. He testified he was forced to activate his emergency lighting to alert other vehicles. App. at 106; Tr. of June at 101. He testified that he did not know the driver of the vehicle. App. at 107; Tr. of June 26 at 102.

The defendant testified that the plaintiff approached him, refused his directive to get back in his car, and continued to walk towards the defendant, saying on more than one occasion, "You can't do anything to me." App. at 108-109; Tr. of June 26 vat 103-104. Officer Murphy, the defendant, also testified that he noticed that the inside door panel to the car driven by the plaintiff was missing, there were wires hanging out, and he thought there was a possible problem with the vehicle. App. at 108; Tr. of June 26 at 103.

Officer Murphy testified that as the plaintiff approached him and closed the distance between them, the police officer put out his hand in a defensive move. App. at 109; Tr. of June 26 at 104. The officer testified that at that point the plaintiff grabbed the officer's arm and that the officer than grabbed onto him and put the plaintiff onto the back of the car. App at 109; Tr. of June 26 at 104. The officer testified that he told the plaintiff to stop resisting and calm down, but the plaintiff refused. App. at 109; Tr. of June 26 at 104. The officer testified that a struggle ensued, with both parties ending up on the ground. App. at 110-112; Tr. of June 26 at 105-107. The officer testified that he finally sprayed the plaintiff with

capstun, a chemical agent. App. at 112-113; Tr. of June 26 at 107-108. He testified that the plaintiff was finally handcuffed, trans ported to the police station, and processed. App. at 114-116; Tr. of June 26 at 109-111. Processing was described to the injury as involving photographing, fingerprinting, and writing down information. App. at 116; Tr. of June at 111.

D. Argument

As a result of the altercation that was the basis of the events in this case, the plaintiff was charged with simple assault and resisting arrest. App. at 47; Tr. of June 26 at 42. He was not allowed to testify about disposition of those charges. App. at 47; Tr. of June 26 at 42. The plaintiff also sought to introduce into evidence Exhibit 26, the documents showing the disposition of the criminal charges against him. App, at 151; Tr. June 27 at 5. The court noted that it had reviewed the document and spent time with counsel in chambers regarding the admission of the document. App. at 151; Tr. of June 27 at 5. The court ruled that the document was not relevant and therefore would not be admitted. App. at 151-152; Tr. of June 27 at 5-6. The document is reproduced in the addendum at pp. 2-7.

The jury in this case knew the plaintiff had been arrested. The information was conveyed to them by the plaintiff who testified he was arrested and charged with assault and resisting arrest. App. at 47; Tr. of June 26 at 42. As a practical matter, the testimony of the defendant also told the jury there was an arrest, even if he did not use the precise language denoting an arrest for a particular crime. He testified that the plaintiff was handcuffed, transported to the police station, photographed and fingerprinted. In effect, the jury was told again that the plaintiff was charged with the commission of a crime. The question this case presents is whether or not the information as to the disposition of those charges is revellent.

Under Federal Rule of Evidence 401, the question is would the evidence "....make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The court of Appeals has said:

> The trier (of fact) must be sufficiently informed of the under lying relationships, circumstances and influences operating on a witness so that, in light of his experience, he can determine whether a mutation in testimony could reasonably be expected as aprobable human reaction. (citation omitted).

United States v. Balsam, 203 F. 3d 72, 85 (1st Cir. 2000), citing United States v. Robinson, 174 U.S. App. D.C. 224, 530 F. 2d 1076, 1079 (D.C. Cir, 1976). The quoted passage was referring to the right to show the basis of a witness.

In this case, the interest of the witness, officer Murphy, was also of paramount concern. In this regard, the outcome of the criminal charges lodged against the plaintiff was relevant. Exhibit 26 makes clear that the charge of assaulting officer Murphy was dismissed and the charge of resisting arrest was filed for one year. Moreover, the jury was aware the plaintiff had been charged. In such a situation, for the jury to be aware that the plaintiff had been charged, but not to inform the jury of the outcome of the charges was to leave the jury uniformed about one of the central aspects of the whole confrontation between the parties. To inform the jury of the outcome of the criminal charges against the plaintiff would enlighten the jury on both issues presented to them, the false arrest and excessive force claims. The information not admitted would put the entire event between the plaintiff and the defendant Murphy in context. For these reasons the evidence should have been allowed.

The Court of Appeal held that the nature of filing of one charge in this case and the dismissal of the other precluded drawing an inference as to the consequence of the disposition in a manner that would assist in the determination of the plaintiff's allegations against the police. The Court of Appeals, in effect, was saying this was a disposition whose meaning was not absolutely plain and would require elucidation. This argument supports admission of the disposition, with all parties being afforded an opportunity to explain the disposition to the jury. Just because the evidence is potentially complex or ambiguous is not a reason to exclude the evidence, but rather a reason to admit the evidence, with the opportunity to explain the same.

VI. CONCLUSION

For the reasons set forth above, the petitioner urges that this court grant certiorari to determine whether the action of the Court of Appeals for the First Circuit as set forth above were in error.

FERNANDO MARCELLA
Por se

FERNANDO MARCELLA
Pro se
3 Oakhill Drive
Lincoln, RI 02865
401-333-0724

Appendix 1

UNITED STATES COURT OF APPEALS
For the First Circuit

FERNANDO MARCELLA,
Plaintiff, Appellant,

v.

KEVIN MURPHY, ET AL.,
Defendants, Appellees,

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

(Hon. Mary M. Lisi, U.S. District Judge)

Before

Selya, Curcuit Judge,
Campbell and Stahi, Senior Circuit Judges.

Fernando Marcella on brief pro se.
Marc Desisto on brief for appellees.

June 12, 2001

Appendix 2

Per Curiam, After carefully reviewing the record and briefs on appeal, we affirm the decision below.

We are satisfied that the evidence showing the prior disposition of the two criminal charges against Marcella was immaterial and was properly excluded by the district court. The disposition sought to be placed in evidence was dismissal of the criminal assault charge coupled with the one- year filing under R.I.G.L. 12-10-12 of the charge for resisting arrest. This disposition must be viewed in light Marcella's past illness and the likely interest of those concerned to ettectuate a non-criminal disposition consistent with this pragmatic plea arrangement that the prosecution was or was not conceding anything as to the underlying truth of the assault charge. Dismissal of that charge cannot be viewed in isolation from continued retention for possible prosecution within one year of the resisting arrest charge. We note that defendant Murphy testified in the instant case that he arrested Marcella because Marcella's alleged assault upon him. Had the resisting arrest charge been prosecuted during one-year following the disposition, the government would presumably have expected to seek to prove the assault as constituting a lawful basis for the

arrest. Hence, we cannot say that admission of evidence of this prior disposition of the criminal charges would "make...the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence," Fed. R. Evid. 401. We hold that the district court acted properly within its broad discretion to exclude the evidence in question. Faigin v. Kelly, 184 F. 3d 67. 79-80 (1st cir. 1999).

Affirmed. Loc. R. 27 (c)

Appendix 4

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

FERNANDO MARCELLA,
Plaintiff-Appellant,

v.

KEVIN MURPHY, ET AL.,
Defendants-Appellees.

Judgment

Enter: June 12, 2001

This cause came on to be submitted on the briefs and original record on appeal from United States District Court for the District of Rhode Island.

Upon consideration whereof, it is now here order, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:

Phoebe D. Morse, Clerk

By: Janice M. Oneal
Cheif Deputy Clerk

(cc: Messrs. Mercella and Desisto)

Appendix 5

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

District of Rhode Island

FERNANDO MARCELLA

V.

KEVIN MURPHY, et als

JUDGMENT IN A CIVIL CASE

CASE NUMBER: CV 99-487 ML

☒ **Jury Verdict.** This action came before the court for a trail by jury. The issues have been tried and the jury has rendered its verdict.

☐ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Judgment is entered for the defendant, Kevin Murphy, in accordance with the jury verdict form entered on June 27, 2000.

June 28, 2000
Date

David A. DiMarzio
Clerk

Dawn Delano
(by) Deputy Clerk